

Exempt manufacturing equipment can include chemicals if they effect a direct and immediate change upon a product being manufactured pursuant to 86 Ill. Adm. Code 130.330(c)(6). (This is a GIL).

October 22, 2002

Dear Xxxxx:

This General Information Letter issued pursuant to 2 Ill. Adm. Code 1200 is intended to clarify the Department's July 27, 2001 response to your letter dated May 29, 2001. A General Information Letter is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

The July 27, 2001 letter stated as follows:

"After receiving conflicting opinions from the Department of Revenue on the taxability of a couple of items, it was suggested that we write directly to you for a letter ruling.

"AAA is a manufacturer of frozen dinners. We cook and prepare the food, place it on trays, package it and freeze it before it is sent to our customers.

"1. We are purchasing liquid nitrogen from BBB. The nitrogen is used primarily to 'flash freeze' our product before sent to the customer. This is necessary to both preserve the integrity of our product and to provide it in a frozen state necessary to be sold. Our question is whether the nitrogen would be taxable or exempt. We are aware that chemical/gases are typically taxable, however, we were told by one of your auditors that it may qualify for exemption, as the nitrogen changes form and adheres with the product as a component ingredient.

"2. We are also purchasing machinery to utilize the nitrogen to freeze our product. After the product is prepared and placed in the container, it is sent through a nitrogen freezing tunnel for the purposes stated above. We were told that this should be exempt machinery, but would like you to confirm that opinion.

"We appreciate your time on this matter. Please send all correspondence to the following address.

"If you have any questions, please do not hesitate to contact me.

"Enclosed is a copy of 86 Ill. Adm. Code 130.330 concerning the Manufacturing Machinery and Equipment Exemption. The production of food products has been

determined to be a manufacturing process required for exemption. The Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease.

"As a general proposition, purchasers of equipment to be used primarily in the manufacture of food products for sale, such as cheese, bread or frozen dinners, can claim the exemption because the food processing constitutes the manufacturing or assembling of tangible personal property. Independent devices, separate from machinery but essential to the manufacturing or assembling process can qualify, including parts which require periodic replacement in the normal course of operation. Machinery or conveyor belts used to move the dinners through the freezing process as described in your letter could qualify for the exemption. However, the exemption does not include hand tools, consumable supplies, fuel, natural gas, artificial gasses or industrial gasses. See Section 130.330(c)(3).

"The information contained in your letter contains a statement that a portion of the nitrogen adheres with the product as a component ingredient. We do not have sufficient information to determine if a portion of liquid nitrogen would adhere to and remain a part of a frozen dinner when it is sold. Assuming that this was the case, the resale exemption would apply to the extent an item is later sold as part of an intentionally produced product or byproduct of manufacturing. See 86 Ill. Adm. Code 130.210, enclosed. Please note an item that evaporates from a product prior to the sale of the item is not eligible for the resale exemption.

"For the percentage portion of an ingredient that becomes a component part of the product that is sold at retail, you may claim the resale exemption by submitting a blanket percentage-use Certificate of Resale to your vendor. This certificate should state the percentage of your purchases of the ingredient that are exempt from tax as purchases for resale and it should also state that the remaining purchases are taxable as purchases for use. See 86 Ill. Adm. Code 130.1405(c)(2)."

## **DEPARTMENT'S RESPONSE**

As we explained in our July 27, 2001 letter to you, 86 Ill. Adm. Code 130.330 governs the Manufacturing Machinery and Equipment Exemption. The production of food products has been determined to be a manufacturing process required for exemption. The Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease.

As a general proposition, purchasers of equipment to be used primarily in the manufacture of food products for sale, such as cheese, bread or frozen dinners, can claim the exemption because the food processing constitutes the manufacturing or assembling of tangible personal property. Independent devices, separate from machinery but essential to the manufacturing or assembling process can qualify, including parts which require periodic replacement in the normal course of operation. Machinery or conveyor belts used to move the dinners through the freezing process as described in your letter could qualify for the exemption. However, the exemption does not include hand tools, consumable supplies, fuel, natural gas, artificial gas, steam, refrigerants, or water. See Section 130.330(c)(3).

We have reexamined your usage of the liquid nitrogen as set out in your May 29, 2001 letter. We conclude the usage qualifies for the manufacturing exemption by virtue of it being a chemical that effects a direct change upon a material that is being manufactured. In addition, effective August 23, 2001, the statutory definition of exempt equipment was expanded to include chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for wholesale or retail sale or lease. This change resulted from Public Act 92-0484. Please see subsection (c)(6) of 86 Ill. Adm. Code 130.330 for illustrative examples of chemicals that qualify for the exemption. Please note it is important for the chemicals to effect a direct and immediate change upon the product being manufactured for sale or lease. As a general proposition, liquid nitrogen that makes a direct and immediate change upon a product being manufactured, such as freezing the product, can qualify for the exemption.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk